



0000076887

MICHAEL W. SILLYMAN #004259
KUTAK ROCK LLP
Suite 300
8601 North Scottsdale Road
Scottsdale, AZ 85253-2742
(480) 429-5000
Facsimile: (480) 429-5001

Attorneys for Intervenors

RECEIVED

2007 SEP 13 P 2:24

AZ CORP COMMISSION
DOCKET CONTROL

BEFORE THE ARIZONA CORPORATION COMMISSION

In the matter of

AGRA-TECHNOLOGIES, INC. (a/k/a
ATI), a Nevada Corporation, 5800 North
Dodge Avenue, Bldg. A, Flagstaff, Arizona
86004-2963;

WILLIAM JAY PIERSON (a/k/a BILL
PIERSON), and SANDRA LEE PIERSON
(a/k/a SANDY PIERSON), husband and
wife, 6710 Lynx Lane Flagstaff, Arizona
86004-1404;

RICHARD ALLEN CAMPBELL (a/k/a
DICK CAMPBELL), and SONDRRA JANE
CAMPBELL, husband and wife, 8686 West
Morten Avenue, Glendale, Arizona 85305-
3940;

WILLIAM H. BAKER, JR (a/k/a BILL
BAKER), and PATRICIA M. BAKER,
3027 N. Alta Vista, Flagstaff, Arizona
86004;

JERRY JOHNSTON HODGES, 1858
Gunlock Court, Saint George, Utah 84790-
6705; and

LAWRENCE KEVIN PAILLE (a/k/a
LARRY PAILLE), 220 Pinon Woods Drive,
Sedona, Arizona 86351-6902;

Respondents.

DOCKET NO.: S-20484A-06-0669

MOTION TO EXPEDITE
CONSIDERATION OF

AND

MOTION TO PLACE MOTION FOR
RECONSIDERATION OF DENIAL OF
APPLICATION FOR INTERVENTION
ON AGENDA FOR ARIZONA
CORPORATION COMMISSION'S
SEPTEMBER 19, 2007 MEETING

Arizona Corporation Commission

DOCKETED

SEP 13 2007

DOCKETED BY

nr

On August 20, 2007, Applicants for intervention filed their Application for

1 Intervention seeking to intervene in the above captioned matter pursuant to A.A.C. Rules
2 R14-4-301 and R14-3-105. Those rules permit intervention if:

- 3 1. the intervenors are directly and substantially affected by the proceedings; and,
4 2. involvement of the intervenors will not unduly broaden the issues to be presented.

5 *A.A.C. R14-3-105.A. and B.*

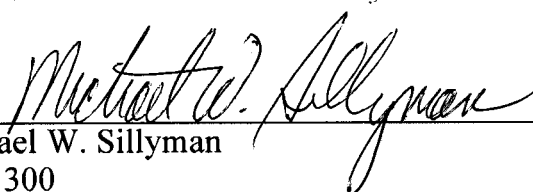
6 Prospective Intervenors hold a substantial number of ore contracts purchased from
7 Agra-Technologies, Inc. exceeding several million dollars. They will be directly and
8 substantially affected by the proceedings in this matter. The involvement of the Intervenors
9 will not unduly broaden the issues to be presented and, in fact, will not broaden the issues at
10 all. Copies of the Application to Intervene and the Reply re Application to Intervene are
11 attached.

12 The Administrative Law Judge assigned to hear this matter denied the Application to
13 Intervene without addressing any of the permissible bases for intervention. Prospective
14 Intervenors, therefore, request reconsideration of their Application to Intervene by the
15 Arizona Corporation Commission itself. As citizens, consumers, customers and as directly
16 and substantially affected persons, the prospective Intervenors should be allowed to
17 intervene and actively participate in the hearing for the purpose of developing the evidence
18 and testimony and creating a just and credible record.

19 It is respectfully requested that the Arizona Corporation Commission expedite its
20 determination of this motion, place the motion on its September 19, 2007, agenda and
21 reconsider the denial of the Application for Intervention.

22 Dated this 13th day of September, 2007.

23 KUTAK ROCK LLP

24 By 
25 Michael W. Sillyman
26 Suite 300
27 8601 North Scottsdale Road
28 Scottsdale, AZ 85253-2742
Attorneys for Intervenors

1 **ORIGINAL AND THIRTEEN (13) COPIES**
2 of the foregoing hand-delivered this 13th day of September,
3 2007, to:

4 Docket Control
5 Arizona Corporation Commission
6 1200 West Washington
7 Phoenix, AZ 85007

8 **ONE COPY** of the foregoing hand-delivered
9 this 13th day of September, 2007, to:

10 Marc Stern, ALJ
11 Arizona Corporation Commission
12 1200 West Washington
13 Phoenix, AZ 85007

14 **ONE COPY** of the foregoing hand-delivered
15 and electronically mailed this 13th day of September, 2007, to:

16 Securities Division
17 Arizona Corporation Commission
18 Attn: Julie Coleman, Esq., Mike Dailey, Esq., Mark Dinell, Esq.
19 1300 West Washington, Third Floor
20 Phoenix, AZ 85007

21 Lonnie Williams, Esq.
22 Carrie M. Francis, Esq.
23 Quarles & Brady Streich Lang, L.L.P.
24 One Renaissance Square, Two North Central Avenue
25 Phoenix, AZ 85004-2391
26 *Attorneys for Respondents Agra Technologies, Pierson and Baker*

27 Geoffrey S. Kerckmar, Esq.
28 The Kerckmar Law Firm P.C.
3260 N. Hayden Road, Suite 204
Scottsdale, AZ 85251
Attorneys for Respondents Hodges and Paille

Peter Strojnik, Esq.
3030 North Central Ave.
Suite 1401
Phoenix, AZ 85012
Attorneys for Respondents Campbell

By: 

COPY
APPLICATION TO INTERVENE
FILED AUGUST 20, 2007

1 MICHAEL W. SILLYMAN #004259
2 KUTAK ROCK LLP
3 Suite 300
4 8601 North Scottsdale Road
5 Scottsdale, AZ 85253-2742
6 (480) 429-5000
7 Facsimile: (480) 429-5001

8 *Attorneys for Intervenors*

RECEIVED

2007 AUG 20 A 11: 23

AZ CORP COMMISSION
DOCKET CONTROL

BEFORE THE ARIZONA CORPORATION COMMISSION

10 In the matter of

DOCKET NO.: S-20484A-06-0669

11 AGRA-TECHNOLOGIES, INC. (a/k/a
12 ATI), a Nevada Corporation, 5800 North
13 Dodge Avenue, Bldg. A, Flagstaff, Arizona
14 86004-2963;

APPLICATION TO INTERVENE

15 WILLIAM JAY PIERSON (a/k/a BILL
16 PIERSON), and SANDRA LEE PIERSON
17 (a/k/a SANDY PIERSON), husband and
18 wife, 6710 Lynx Lane Flagstaff, Arizona
19 86004-1404;

20 RICHARD ALLEN CAMPBELL (a/k/a
21 DICK CAMPBELL), and SONDR A JANE
22 CAMPBELL, husband and wife, 8686 West
23 Morten Avenue, Glendale, Arizona 85305-
24 3940;

25 WILLIAM H. BAKER, JR (a/k/a BILL
26 BAKER), and PATRICIA M. BAKER,
27 3027 N. Alta Vista, Flagstaff, Arizona
28 86004;

JERRY JOHNSTON HODGES, 1858
Gunlock Court Saint George, Utah 84790-
6705; and

LAWRENCE KEVIN PAILLE (a/k/a
LARRY PAILLE), 220 Pinon Woods Drive,
Sedona, Arizona 86351-6902;

Respondents.

Pursuant to A.A.C. Rules R14-4-301 and R14-3-105, application is made to intervene

1 as parties in the above captioned proceeding. This application to intervene is made on behalf
2 of certain participants in the Ore Rights and Mining Project of Agra Technologies Inc.
3 ("ATI"). Intervenors¹ represent participants who hold a substantial number of ore contracts
4 purchased from ATI and are, thereby, directly and substantially affected by the proceedings
5 in this matter. For the reasons set forth in the following Memorandum of Points and
6 Authorities, the Intervenors respectfully request that their Application to Intervene be
7 granted and that they be permitted to participate in all proceedings relating to this matter.

8 **MEMORANDUM OF POINTS AND AUTHORITIES**

9 Collectively, Intervenors have purchased a substantial number of ore contracts and,
10 therefore, have considerable financial interest in the outcome of these proceedings. As
11 financial participants, the Intervenors are knowledgeable of the business and operational
12 aspects of ATI and the disposition of this matter may impair or impede their ability to protect
13 their financial and contractual commitments. The involvement of the Intervenors in this
14 proceeding will not unduly broaden the issues presented to the Arizona Corporation
15 Commission ("ACC") and, in fact, is expected to assist in the development and accuracy of
16 facts presented at the hearing and the ultimate conclusions reached by the Commission as
17 well as provide the Intervenors with essential information concerning the validity and
18 enforceability of their contracts.

19 The rules of the ACC provide for intervention under circumstances which are
20 currently present. See A.C.C. R14-4-301 ("When not in conflict with this Article, the
21 provisions of A.A.C. R14-3-101 through R14-3-113 apply") and R14-3-105 ("Persons . .
22 .who are directly and substantially affected by the proceedings, shall secure an order from
23 the Commission or presiding officer granting leave to intervene . . .").

24 ***Intervenors Are Directly and Substantially Affected by the Proceedings And Should*** 25 ***be Allowed to Intervene***

26 As financial participants in ATI, and collectively representing a majority of

27 ¹ Intervenors consist of Sperry Andrews, Hoffa Bogart, Colin Caie, Bob and Peggy DeYoung, Rhonda Faris-Holman,
28 Patricia Kerschner, Nigel Smith, James Sweet, Jeanie Stevenson, James Urquhart and Dave and Janet Vette. Additional
intervenors may be added in the near future.

1 participants holding ore contracts, Intervenor will be directly and substantially affected by
2 the outcome of the proceedings. If the allegations of the ACC are proven, Intervenor could
3 lose their entire financial commitments as well as their rights to mineral aggregate purchased
4 pursuant to their contracts. The financial loss to Intervenor individually, in such a situation,
5 could prove economically disastrous. Intervenor have not been contacted by the Securities
6 Division, no information or testimony has been solicited from them as to the validity of the
7 allegations against the respondents, and information regarding the status of proceedings has
8 been minimal to non-existent and totally unsatisfactory.

9 Intervenor want to assure that the proceedings are conducted in a fair and balanced
10 manner and believe that their participation in the proceedings will contribute to both.
11 Intervenor have knowledge concerning many of the factual allegations in the First Amended
12 Temporary Order to Cease and Desist and Notice of Opportunity for Hearing and want their
13 testimony and information to form a part of the record in this proceeding. In addition,
14 Intervenor are concerned with the delays that have occurred in bringing this matter to a
15 hearing and want a voice in assuring that further delays do not occur.

16 Under the circumstances described above, intervention is allowed and appropriate.
17 *Cf. Mountain States Telephone and Telegraph Company v. Arizona Corporation*
18 *Commission*, 160 Ariz. 350, 353, 773 P.2d 455, 458 (1989) (intervention permitted when
19 intervenors had economic interests at stake); *Saunders v. Superior Court in and for*
20 *Maricopa County*, 109 Ariz. 424, 426, 510 P.2d 740, 742 (1973) (intervention warranted
21 when interests of beneficiaries would effectively be disposed of without any opportunity for
22 them to be heard); and *Hill v. Alfalfa Seed & Lumber Co.*, 38 Ariz. 70, 73, 297 P. 868, 869
23 (1931) (intervention should have been permitted when interest entitling a person to intervene
24 was in the matter in litigation and of such direct and immediate character that intervenor
25 could have either gained or lost by direct legal operation and effect of the judgment).

26 27 CONCLUSION

28 Intervenor respectfully request that their Application to Intervene be granted and that

1 they be permitted to participate in discovery and at the hearing.

2 Dated this 20th day of August, 2007.

3 KUTAK ROCK LLP

4
5 By Michael W. Sillyman
6 Michael W. Sillyman
7 Suite 300
8 8601 North Scottsdale Road
9 Scottsdale, AZ 85253-2742

Attorneys for Intervenors

10 **ORIGINAL AND THIRTEEN (13) COPIES**

11 of the foregoing hand-delivered this 20th day of August,
12 2007, to:

13 Docket Control
14 Arizona Corporation Commission
15 1200 West Washington
16 Phoenix, AZ 85007

17 **ONE COPY** of the foregoing hand-delivered
18 this 20th day of August 2007, to:

19 Marc Stern, ALJ
20 Arizona corporation Commission
21 1200 West Washington
22 Phoenix, AZ 85007

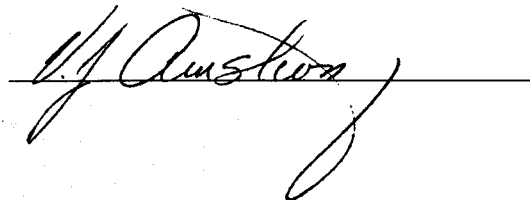
23 **ONE COPY** of the foregoing hand-delivered
24 and electronically mailed this 20th day
25 of August 2007, to:

26 Securities Division
27 Arizona Corporation Commission
28 Attn: Mike Dailey, Esq. and Mark Dinell, Esq.
1300 West Washington, Third Floor
Phoenix, AZ 85007

Lonnie Williams, Esq.
Carrie M. Francis, Esq.
Quarles & Brady Streich Lang, L.L.P.
One Renaissance Square, Two North Central Avenue
Phoenix, AZ 85004-2391
Attorneys for Respondents Agra Technologies, Pierson and Baker

1 Geoffrey S. Kerckmar, Esq.
2 The Kerckmar Law Firm P.C.
3 3260 N. Hayden Road, Suite 204
4 Scottsdale, AZ 85251
5 *Attorneys for Respondents Hodges and Paille*

6 Peter Strojnik, Esq.
7 3030 North Central Ave.
8 Suite 1401
9 Phoenix, AZ 85012
10 *Attorneys for Respondents Campbell*

11 
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

COPY

REPLY RE APPLICATION TO INTERVENE

FILED AUGUST 27, 2007

MICHAEL W. SILLYMAN #004259
KUTAK ROCK LLP
Suite 300
8601 North Scottsdale Road
Scottsdale, AZ 85253-2742
(480) 429-5000
Facsimile: (480) 429-5001

Attorneys for Intervenors

RECEIVED

2001 AUG 27 P 2:20

**AZ CORP COMMISSION
DOCKET CONTROL**

BEFORE THE ARIZONA CORPORATION COMMISSION

In the matter of

AGRA-TECHNOLOGIES, INC. (a/k/a
ATI), a Nevada Corporation, 5800 North
Dodge Avenue, Bldg. A, Flagstaff, Arizona
86004-2963;

WILLIAM JAY PIERSON (a/k/a BILL
PIERSON), and SANDRA LEE PIERSON
(a/k/a SANDY PIERSON), husband and
wife, 6710 Lynx Lane Flagstaff, Arizona
86004-1404;

RICHARD ALLEN CAMPBELL (a/k/a
DICK CAMPBELL), and SONDR A JANE
CAMPBELL, husband and wife, 8686 West
Morten Avenue, Glendale, Arizona 85305-
3940;

WILLIAM H. BAKER, JR (a/k/a BILL
BAKER), and PATRICIA M. BAKER,
3027 N. Alta Vista, Flagstaff, Arizona
86004;

JERRY JOHNSTON HODGES, 1858
Gunlock Court Saint George, Utah 84790-
6705; and

LAWRENCE KEVIN PAILLE (a/k/a
LARRY PAILLE), 220 Pinon Woods Drive,
Sedona, Arizona 86351-6902;

Respondents.

DOCKET NO.: S-20484A-06-0669

**REPLY RE APPLICATION TO
INTERVENE**

(Administrative Law Judge Marc Stern)

Oral Argument Requested

1 Applicants for intervention hereby reply to the response filed by the Securities
2 Division ("Division") of the Arizona Corporation Commission ("Commission") to the
3 Application to Intervene.

4 MEMORANDUM OF POINTS AND AUTHORITIES

5 Argument

6 A. Applicants are Directly and Substantially Affected by the Administrative 7 Proceedings and Should be Permitted to Intervene.

8 The Division argues that the Commission "does not have any jurisdiction to
9 adjudicate the *individual and private rights* of the Petitioners [sic] in the instant regulatory
10 action." Response at p. 3. However, that is not the test for intervention under the
11 Commission's rules. The issue for intervention is not the individual and private rights of the
12 Applicants, rather, whether they "are directly and substantially affected by the proceedings."
13 A.C.C. R14-3-105.

14 It cannot be seriously argued that the Applicants will not be directly and substantially
15 affected by the hearing on the order to cease and desist. The Applicants' participation in the
16 Ore Rights and Mining Project of Agra-Technologies Inc. ("ATI") exceeds several million
17 dollars. The hearing, as framed by the Division, will determine whether the ore contracts
18 purchased by Applicants and others (referred to as "Units" in the Division's Response)
19 constitute securities and whether the offer and sale of those Units constitute the offer and
20 sale of unregistered securities by unregistered dealers or salesmen. The hearing will also
21 determine whether fraud was committed in the offer and sale of the Units. *First Amended*
22 *Temporary Order To Cease and Desist and Notice of Opportunity For Hearing ("Amended*
23 *Order")* pages 22-26. The Division requests relief in the form of a permanent cease and
24 desist order, which includes the offer and sale of the Units, restitution and penalties. *Id. at*
25 *page 27.*

26 How can the Applicants not be directly and substantially affected if restitution is
27 ordered and if substantial penalties are imposed against ATI? Undoubtedly, such an order
28 would effectively bring ATI's business operations to a halt. The development and

1 processing of mineral aggregate material, pursuant to Applicants' Ore Rights and Mining
2 Agreements, would be discontinued and the Applicants would lose their entire financial
3 commitments as well as their right to the mineral aggregate purchased pursuant to their
4 contracts. Applicants have clearly met the burden of being directly and substantially affected
5 by the hearing.

6 **B. Applicants' Personal Knowledge Regarding the Allegations in Dispute Is**
7 **Not Only Relevant But Cannot Be Adequately Presented by the Parties to the**
8 **Regulatory Action.**

9 The Applicants are most interested in assuring that the hearing is conducted fairly,
10 and with due process and that the record contains all the relevant evidence and testimony
11 necessary for a reasoned, supportable and just decision. None of the Applicants has been
12 asked to be a witness at the hearing, none has been contacted by the Division, and they have
13 no reason to believe that their testimony or evidence will be presented.

14 Applicants do not agree that this proceeding is an "investigation" as asserted by the
15 Division. *Response at page 4.* Nowhere in the Amended Order does the Division assert its
16 allegations upon information and belief. All of its allegations are based on "fact"¹ and its
17 violations are findings. This matter ceased to be an investigation when the Commission
18 issued the Temporary Order To Cease and Desist and Notice of Opportunity for Hearing and
19 subsequently, the Amended Order. Surely, the Commission had evidence to support its
20 "facts" and findings at the time of serving the original order and the Amended Order.
21 Further "investigation" in the form of examinations under oath is nothing more than
22 discovery.

23 The Commission's statutory authority to investigate, pursuant to A.R.S. § 44-1822,
24 ended when it made its determination in the original order and in the Amended Order that
25 Respondents violated the provisions of A.R.S. § § 44-1801, *et seq.* ("The commission, the
26 director or other agent or agents designated by the commission may make such public or
27 private investigations . . . as the commission deems necessary to determine whether any

28 ¹ Section III of the Amended Order is captioned with the heading "FACTS."

1 person has violated . . . any provision of this chapter or any rule or order hereunder . . ."
2 A.R.S. § 44-1822.

3 The Division believes that it can conduct examinations under oath of witnesses
4 without attendance of parties or others² and use the evidence obtained in a contested
5 proceeding. Applicants do not agree to submitting to such examinations that they believe to
6 be unfair and a violation of due process for the Respondents.

7 Examinations under oath are formal interviews in investigative proceedings. *See*
8 A.C.C. R14-4-302.1. ("Formal interview" means the examination under oath of an individual
9 compelled or requested to testify as part of an investigation or examination.") The hearing
10 which is the subject of Applicants' Application to Intervene is not an investigation, rather, it
11 is a contested proceeding. Nowhere in the Securities Act, the Commission's rules and
12 regulations, or elsewhere is an investigation defined as including hearings based on orders
13 issued by the Commission. Once the Respondents requested a hearing on the Amended
14 Order, the proceeding became contested and subject to due process requirements. *Sulger v.*
15 *Arizona Corporation Commission*, 5 *Ariz. App.* 69, 73, 423 P.2d 145, 149 (1967) (*due*
16 *process prohibits the state from acting arbitrarily in its proceedings*); and A.C.C. R14-3-
17 101.A. ("In all cases in which procedure is set forth neither by law, nor by these rules, nor
18 by regulations or orders of the Commission, the Rules of Civil Procedure for the Superior
19 Court of Arizona as established by the Supreme Court of the state of Arizona shall govern.")
20 and A.R.S. § 41-1062.³ *See generally* 73 C.J.S. § 123, *Public Administrative Law and*
21 *Procedure* (Westlaw 2007) (*due process of law requirements apply to administrative bodies*
22 *and their proceedings*); *Broadhead v. Arizona Bd. of Pardons and Paroles*, 151 *Ariz.* 37, 42,
23 725 P.2d 744, 749 (Ct. App. 1986) (*procedural due process rights violated by refusal to*
24 *administer oaths or affirmation to witnesses in contested proceeding*), *overruled on other*
25 *grounds* 154 *Ariz.* 476, 744 P.2d 3 (1987).

26 ² Undersigned counsel requested permission to attend the examination under oath of Respondent William Baker pending
27 a ruling on the Application. His request was denied based on A.C.C. R14-4-304.E.

28 ³ The provisions of the Article 6 of the Administrative Procedure Act ("APA") specifically provide that a hearing officer
may order prehearing depositions. Nowhere in the APA or the Rules of Civil Procedure can depositions be permitted
without all parties presence.

1 **3. The Administrative Law Judge May Allow A Consumer To Be Heard At**
2 **A Hearing Without Intervention But Shall Order Intervention When An Applicant Is**
3 **Directly And Substantially Affected By The Outcome**

4 Applicants agree that the Commission's rules permit any consumer to appear at any
5 proceeding and make a statement. A.C.C. R14-3-105.⁴ Applicants, however, want to
6 participate in the proceedings to make sure that the Commission hears and is presented with
7 all relevant evidence. Applicants believe that they have substantive facts in their possession
8 that will assist the trier of fact in adjudicating the allegations in the Amended Order. They
9 also want to know what is happening in the proceedings and be involved in the process of
10 bringing this matter to conclusion in a speedier and more efficient manner. They have no
11 intention to unduly broaden the issues to be presented; rather, their intention is to bring the
12 issues to closure with a full and complete record.

13 **4. An Expedited Ruling Is Essential**

14 For the reasons stated above, an expedited ruling is essential to Applicants to assure
15 their participation in the Division's ongoing discovery and to allow their voice in presenting
16 evidence and assuring a speedy and fair conclusion.

17 **Conclusion**

18 Applicants meet the requirements for intervenors under the Commission's rules and
19 ask that their Application to Intervene be granted.

20 Dated this 27th day of August, 2007.

21 **KUTAK ROCK LLP**

22 By 

23 Michael W. Sillyman
24 Suite 300
25 8601 North Scottsdale Road
26 Scottsdale, AZ 85253-2742

27 *Attorneys for Intervenors*

28 ⁴ "Consumer", however, is nowhere defined in the Commission rules. Whether Applicants constitute "consumers", for purposes of the Commission rule in this proceeding, is unknown.

1 **ORIGINAL AND THIRTEEN (13) COPIES**
2 of the foregoing hand-delivered this 27th day of August,
2007, to:

3 Docket Control
4 Arizona Corporation Commission
1200 West Washington
Phoenix, AZ 85007

5 **ONE COPY** of the foregoing hand-delivered
6 this 27th day of August 2007, to:

7 Marc Stern, ALJ
8 Arizona Corporation Commission
1200 West Washington
Phoenix, AZ 85007

9
10 **ONE COPY** of the foregoing hand-delivered
11 and electronically mailed this 27th day
of August 2007, to:

12 Securities Division
13 Arizona Corporation Commission
Attn: Julie Coleman, Esq., Mike Dailey, Esq., Mark Dinell, Esq.
14 1300 West Washington, Third Floor
Phoenix, AZ 85007

15 Lonnie Williams, Esq.
16 Carrie M. Francis, Esq.
Quarles & Brady Streich Lang, L.L.P.
One Renaissance Square, Two North Central Avenue
17 Phoenix, AZ 85004-2391
Attorneys for Respondents Agra Technologies, Pierson and Baker

18 Geoffrey S. Kerksmar, Esq.
19 The Kerksmar Law Firm P.C.
3260 N. Hayden Road, Suite 204
20 Scottsdale, AZ 85251
Attorneys for Respondents Hodges and Paille

21 Peter Strojnik, Esq.
22 3030 North Central Ave.
Suite 1401
23 Phoenix, AZ 85012
Attorneys for Respondents Campbell